



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

August 30, 1991

Ms. Jo Wiginton
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR91-397

Dear Ms. Wiginton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your requests were assigned ID#s 12578 and 12781.

The city of Houston received two written requests for "any and all information in the Houston Police Department files concerning any complaints or grievances or disciplinary actions" pertaining to a named officer of the Houston Police Department. You claim the requested information is excepted by, *inter alia*, section 3(a)(3) of the Open Records Act, which applies to

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

V.T.C.S. art. 6252-17a, § 3(a)(3).

For information to be excepted by section 3(a)(3), two things must be shown. First, it must be established that litigation is pending or reasonably anticipated. Second, it must be demonstrated that the requested information relates to the anticipated litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Under this test, our review is directed to

the relation of the subject matter of the requested information to the pending or anticipated litigation, not its relation to the litigation strategy of the attorney representing the governmental body. Open Records Decision No. 551 (1990). Where the attorney for the governmental body determines that the information relates to pending or anticipated litigation, this office's review will be confined to ascertaining whether that determination is reasonable in light of the facts. *Id.*

You have determined that the requested information relates to the following cases pending in the courts of Harris County to which the city of Houston or the state is a party:

(1) *David Wayne Taylor v. City of Houston*, No. 91-007690 (Dist. Ct. of Harris County, 334th Criminal Judicial Dist. of Texas);

(2) *State of Texas v. Wayne Newberry*, No. 590324 (Dist. Ct. of Harris County, 184th Criminal Judicial Dist. of Texas); and

(3) *State of Texas v. Paul Donovan*, No. 548129 (Dist. Ct. of Harris County, 177th Criminal Judicial Dist. of Texas).

On the basis of the information you have provided, we believe that this conclusion was not unreasonable. Accordingly, the city may withhold the documents pursuant to section 3(a)(3) at this time. We would add that for purposes of section 3(a)(3), the state is considered to be a party to criminal litigation until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state or federal court. V.T.C.S. art. 6252-17a, § 3(e).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-397.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

SA/JM/mc

Ref.: ID#s 12578, 12781, 13429

cc: Mr. Richard L. Moore
3223 Smith Street
Suite 220
Houston, Texas 77006